

EXHIBIT A

PART 5

1 A. Right, absolutely.

2 Q. That's not the way Tina Lindquist's
3 injury occurred; is it?

4 A. Of course not. It has nothing to do
5 with that.

6 Q. Is there any similarity in the test
7 that you conducted and the manner in which Tina
8 Lindquist was injured?

9 A. None whatsoever. That's not what the
10 test was for.

11 Q. Did Tina Lindquist ever tell you that
12 she accidentally put her foot into the foot
13 control?

14 A. She didn't tell me anything.

15 Q. Did you ever read anything in her
16 testimony that indicated she accidentally put her
17 foot into the foot control?

18 A. I don't recall her saying that. I
19 think she said she wasn't riding the pedal and
20 had taken her foot out of the control and
21 then -- but I don't recall her saying anything
22 about what she did. I don't know that she knew
23 what she did.

24 Q. Have you assumed -- but you have

1 assumed that she accidentally put her foot into
2 the foot control; haven't you?

3 A. That's much of an assumption, you know,
4 the --

5 Q. Isn't --

6 A. But that is an accurate statement when
7 you have a one-parameter system.

8 Q. Do you have any factual evidence or
9 support that she -- other than your assumption
10 do you have any actual evidence, testimony,
11 eyewitness, her, that says that she accidentally
12 put her foot into the foot control?

13 A. The -- yes, we -- I have her accident
14 that she had an accident with a foot control and
15 there is only one way to do it, you have to step
16 onto it.

17 Q. Do you have any actual factual evidence
18 that she accidentally with her foot located
19 outside of the foot control, she accidentally
20 stuck it into the foot control and activated the
21 foot pedal?

22 A. No, I don't.

23 Q. For that to have occurred -- are you
24 assuming that's what occurred?

1 A. Yes.

2 Q. And for that to have occurred she would
3 have had to accidentally stuck her foot the entire
4 way in such that she activated that lock plate
5 that you mentioned; right?

6 A. Absolutely right.

7 Q. Has she ever told you that she stuck
8 her foot all the way in and actuated that kick
9 plate?

10 A. Everything we know about her we will
11 have to get from her deposition because I didn't
12 interview her.

13 Q. Okay. And her deposition testimony did
14 not indicate that she stuck it all the way in
15 and hit that kick plate?

16 A. Right, I don't think she knows.

17 Q. Well, did you see that she has
18 indicated she did not accidentally put her foot
19 into that foot control?

20 A. I don't think she said that either.

21 Q. Do you have your summary of the --

22 A. Unfortunately --

23 Q. Of her testimony?

24 A. I don't have the summary, and I didn't

1 have the deposition to rereview last night.

2 Q. Suffice it to say you have not seen the
3 deposition of Gary Dietz?

4 A. Correct.

5 Q. Gary Merkle?

6 A. Correct.

7 Q. Kevin Messenger?

8 A. Correct.

9 Q. Joel Nichols?

10 A. Correct.

11 Q. Jan Oviat?

12 A. Correct.

13 Q. Dave Phillips?

14 A. Correct.

15 Q. Robert Rooney?

16 A. Correct, he was the setup man; wasn't

17 he.

18 Q. Or her husband?

19 A. Wasn't Rooney the setup man?

20 Q. Yes, for her husband?

21 A. Correct.

22 Q. Who she said trained her?

23 A. I don't remember that.

24 Q. I guess you wouldn't have if you didn't

1 see his deposition testimony?

2 A. Right.

3 Q. She has indicated that in her
4 deposition testimony that he trained her.

5 A. I thought there was something in there.

6 Q. Have you ever talked to him?

7 A. No.

8 Q. Have you ever made any attempt to talk
9 to him?

10 A. No, I haven't.

11 Q. I am winding down, so I am going to
12 slow down in my questioning here if you bear
13 with me.

14 A. You are doing fine. You are moving
15 right along.

16 MR. HARTMAN: Can we go off the record for
17 one minute because I want to explain something.

18 THE VIDEOGRAPHER: Off the record at 3:37 p.m.

19 (Discussion off the record.)

20 MR. ROBINSON: Mr. -- we took a little break
21 at Mr. Hartman's request, and he has indicated
22 that the file materials which -- all of the file
23 materials I understand are being brought down
24 here to the deposition area, and I have asked

1 that Mr. Ulmenstein come back so that we can
2 actually take his deposition after having
3 reviewed the summaries and other information
4 that was prepared by him.

5 And Mr. Hartman has indicated he wants
6 to limit the testimony in some fashion. And for
7 some reason despite not giving us as ordered by
8 the court the file, all the file materials
9 before today, and I have indicated that I don't
10 have any ability to prevent him from limiting
11 the deposition if he is going to instruct an
12 unrepresented expert in this case not to answer
13 questions, and his response was then that he is
14 not going to bring Mr. Ulmenstein down to
15 complete the deposition at all.

16 MR. HARTMAN: Once again Mr. Robinson
17 misstates what has taken place and the facts and
18 circumstances of this case.

19 MR. ROBINSON: Let's just make it simple
20 then, is Mr. Ulmenstein coming down with the
21 file so that I can read it --

22 MR. HARTMAN: I am not a witness.

23 MR. ROBINSON: Can you answer that for the
24 court?

1 MR. HARTMAN: I am going to say what I want
2 for the record. I don't have to answer any of
3 your questions.

4 MR. ROBINSON: That's the issue,
5 Mr. Hartman.

6 MR. HARTMAN: Let me state for the record
7 that first off, Mr. Robinson and
8 Mr. Ulmenstein's deposition had indicated that
9 he requested Mr. Ulmenstein's original file
10 which he did. There is no original
11 Mr. Ulmenstein file. His notice of deposition
12 specifically asked for -- with regard to
13 Professor Barnett, that Mr. Barnett provide the
14 file which he was not asking for the original
15 file which we provided him with copies of
16 everything we knew.

17 The only things that we have learned
18 today that were missing from the file were
19 deposition summaries of three witnesses which
20 are excerpts of transcripts of the depositions.

21 I have indicated that these materials,
22 as an additional courtesy, the entire file is
23 being sent down by courier for
24 Professor Barnett.

1 Mr. Robinson then indicated he wanted
2 to redepose Mr. Ulmenstein after he had already
3 released him and he specifically indicated he
4 wanted to go over excerpts and testimony that
5 Professor Barnett gave.

6 And I indicated at that time that I do
7 not have the control over Mr. Ulmenstein as it
8 relates to this matter, B, I would try to get
9 him here if we could limit the testimony to
10 those items which were inadvertently left out of
11 the file. That's my position.

12 MR. ROBINSON: That's quite different,
13 Mr. Hartman, than what you just said that you
14 are not going to bring him down here, quote
15 "then I am not going to bring him down here."

16 MR. HARTMAN: I am not bringing anybody
17 down.

18 MR. ROBINSON: I am just telling you you
19 misstate things. I have very accurately
20 reported what you said. You concluded, well,
21 then I am not bringing him down here.

22 MR. HARTMAN: I am not bringing anybody
23 down. The file is on its way.

24 MR. ROBINSON: I understand. Are you

1 refusing to give me Mr. Ulmenstein to depose him
2 with the file material?

3 MR. HARTMAN: You are assuming I have the
4 ability to get him here and he has no other --

5 MR. ROBINSON: Have you checked? Would you
6 check?

7 MR. HARTMAN: I will check.

8 MR. ROBINSON: Let's take a break and do it
9 now so we can go back on the record because I am
10 going to need to have an answer for this because
11 I am going to ask that we come back.

12 MR. HARTMAN: Well, we are coming back next
13 Wednesday anyway.

14 MR. ROBINSON: Right.

15 MR. HARTMAN: Okay, so we will do it --

16 MR. ROBINSON: No, I'd like to do it today.

17 MR. HARTMAN: If you are right, then we will
18 do it next Wednesday. I am going to try to get
19 him here.

20 MR. ROBINSON: That would be great. It is a
21 very simple issue, and that would solve it.

22 MR. HARTMAN: I told you I would try.

23 THE WITNESS: What were the summaries that
24 Ulmenstein has made?

1 MR. HARTMAN: You have them right there.

2 THE WITNESS: Right, I have two of them, but
3 you mentioned three. Is that just --

4 MR. ROBINSON: Lindquist.

5 THE WITNESS: I don't have the plaintiff.

6 MR. HARTMAN: I am going to find out.

7 MR. ROBINSON: And he has notes he indicated
8 too on the summaries.

9 MR. HARTMAN: There are no notes.

10 MR. ROBINSON: That's what he testified to.
11 I don't know if there are or not.

12 MR. HARTMAN: Well, why don't you wait and
13 get the material and then see.

14 MR. ROBINSON: That would be nice. It would
15 have been great had you complied with the court
16 order. That's the frustration, Mr. Hartman,
17 that's the frustration.

18 MR. HARTMAN: And you imply that I didn't
19 comply.

20 MR. ROBINSON: You didn't.

21 MR. HARTMAN: I did everything I knew.

22 MR. ROBINSON: All right.

23 MR. HARTMAN: You have made mistakes in this
24 case too as far as --

1 MR. ROBINSON: There is no need for us to
2 talk about it.

3 (Recess taken.)

4 THE VIDEOGRAPHER: Back on the record at
5 3:47 p.m.

6 BY MR. ROBINSON:

7 Q. Sir, have you ever designed a foot
8 control for either a punch press or a press
9 brake?

10 A. I am hesitating because I did some
11 research on the design or evaluation of a design
12 for someone else, but I think the most direct
13 answer is no, but there has been proposals for
14 foot controls and patent work and I have
15 reviewed those professionally.

16 Q. When a proper point of operation device
17 is used, are all foot controls equally safe?

18 A. If the -- if the -- if a proper one is
19 used, they all are equally safe because they
20 are -- just activation means and you don't need
21 to have any safety at all.

22 Q. So had the employer used an appropriate
23 point of operation safety device, the foot
24 control that she was using at the time of the

1 incident would have been safe?

2 A. Absolutely. You are, of course,
3 focusing on her accident and not on all things
4 that can happen.

5 Q. Yes, that's for our purposes today and
6 in this lawsuit that's what's significant.

7 What is an arch press?

8 A. It is -- just -- it is a frame, and it
9 has to do with how the frame is made on the
10 press, but it has no special attributes other
11 than that.

12 Q. Is it -- does it fall under the
13 category of a punch press or a press brake?

14 A. Punch press.

15 Q. Do people -- do users use punch presses
16 in ways that are -- let me back up and preface
17 my question. You are talking about the
18 differences -- let me ask it even more
19 generally.

20 What is the difference between the
21 punch press and the press brake relative to your
22 comment that you need a gated foot control on
23 the press brake and you don't need a gated foot
24 control on the punch press?

1 A. The --

2 Q. Please list all of the differences that
3 are relevant in your consideration.

4 A. Well, the punch press, there is a need
5 to rapidly stroke -- make rapid cycles and so
6 the -- there is very little time if you set it
7 up correctly for taking apart, putting it into
8 the machine, making the press, removing the part
9 and then starting that cycle over, so there are
10 very short cycle times on punch presses and very
11 long cycle times relatively speaking on press
12 brakes.

13 The -- if you have short cycle times,
14 it takes time to get your foot out and place it
15 on the ground properly. It is much faster if
16 you can ride the pedal. The --

17 Q. What was the activation times for Tina
18 Lindquist?

19 A. It is 35 strokes per minute on her
20 machine. The -- it is about half of the average
21 punch press.

22 Q. How quickly was she applying the -- how
23 frequently was she applying the foot control?

24 A. I don't think I can tell you. I just

1 tell you the -- you know, you know that she had
2 to do a number of things and put a new part in
3 and mold the part and then come back out.

4 There is a whole group of activities
5 that she is doing that are time consuming
6 relative to a punch press where I put it in,
7 bang, take it out, put it in, bang, and you
8 don't do any business of molding and -- you
9 know, around, you know, mandrels and all of
10 those kinds of things. You don't do any of
11 that.

12 Q. Would you let the court know what you
13 understand to be the process that she was
14 performing relative to the part she was making?

15 A. Well, she had a part that I think she
16 was at the -- at the time were three previous
17 operations that had already been performed on
18 the part.

19 Q. Do you recall what those were?

20 A. No, I don't.

21 Q. Were those a frequent use of the press
22 brake?

23 A. If -- they used press brakes, but I
24 don't know what the timing was on the previous

1 three operations.

2 Q. You don't know if it was as you
3 described being a quick process, stick it in,
4 bend up -- did you read her testimony on this?

5 A. I don't remember the testimony on this.

6 Q. Okay.

7 A. The -- on the part that she was working
8 on and that she was then required, she will pick
9 up a part, probably located on her right side,
10 and she will put this on the mandrel and with
11 her hand she will squeeze and deform it so that
12 it is fixed onto the mandrel.

13 Then she will remove herself, step on
14 the foot pedal and then go in to retrieve that
15 part, place that part in some other basket that
16 would indicate, you know, that this is the part
17 with the completed parts are done. She would
18 repeat that cycle again, and the -- that's a lot
19 of time. By the time she is doing that on a
20 punch press you have made 15, 20 parts.

21 Q. Is there -- do you have in forming your
22 opinion relative to the differences between a
23 press brake and a punch press when a gate should
24 be used on the foot control, what is the cutoff?

1 What's the frequency cutoff of the activation of
2 that machine?

3 A. Well, I don't think I have a frequency
4 cutoff because that is only one of a number of
5 operations. I have never seen a press brake --
6 this press brake is fast.

7 Q. Which press brake?

8 A. The one that is involved here, it is
9 35 strokes per second.

10 Q. Is that relevant in determining whether
11 or not a gate should be used, the speed of the
12 press brake?

13 A. The -- it is -- the -- it is relevant
14 because it is much slower. Even with this speed
15 it is much slower than the average power press.

16 Q. I understand. My question and I
17 apologize if I worded it incorrectly, the faster
18 the press brake, the more likely you would want
19 to see the absence of a gate; is that fair?

20 A. I would -- let me see, I think that's
21 probably true, that's in the same -- they seem
22 to be in the same direction.

23 Q. I thought that's what you --

24 A. The next thing is that -- in my

1 declarations about the -- about the use of the
2 gate the power presses that I was specifically
3 worried about are what was called full
4 revolution clutches. And that means you start
5 the cycle and you can't stop it until it
6 makes -- goes from 12:00 o'clock all the way
7 down to 6:00 o'clock and back up to 12:00. And
8 the -- no press brake has ever been made that
9 way. All press brakes are partial revolution
10 machines, you can stop them at any point in the
11 cycle.

12 Q. And how do you stop them?

13 A. You just take your foot off of the
14 actuating device, either hand controls or foot
15 controls, just take off --

16 Q. Do you know if the press brake that was
17 existing at Corry and that was being used by
18 Tina Lindquist was set up by Corry such that it
19 had a full revolution?

20 A. It can't be set up for a full
21 revolution.

22 Q. And why is that?

23 A. The -- because -- it is the name of the
24 clutch. This clutch is capable of stopping any

1 time you take power off of the unit, and the --
2 and that's a big difference in the -- you know,
3 in having an accident all you have to do is
4 touch the other one and you have a cycle, and
5 you just touch the press brake and you just get
6 a little movement. If you just do what I just
7 said, you just get a little movement.

8 Q. On the foot pedal?

9 A. If it was your foot pedal or your hand
10 control, it is just do this and you get a little
11 movement. And we have all demonstrated that
12 over and over again.

13 I am not the only one that has made a
14 video of the machine, but I make that in my
15 video where I will just touch it quickly and I
16 have watched another video where you touch it
17 quickly, just get a little movement.

18 Q. Is that the only mode of operation for
19 that press brake?

20 A. Yes, the -- that has this -- when I
21 went there, the controls that they had on there
22 had continuous, as long as you put your hand on
23 it, it would keep going up and down and up and
24 down.

1 And continuous operations on press
2 brakes practically have no meaning. You
3 shouldn't really have continuous. These are
4 things where you do all the work on one stroke.
5 You don't have automatic feeding systems.

6 Q. How about with the foot control that
7 was set up by Corry, do you know if it was set
8 up that if you touched it, that -- such that the
9 only method of operation was that if you touched
10 the foot pedal and left off that it would stop?

11 A. It would stop. That's the way it
12 works.

13 Q. So in your opinion as to how her injury
14 was caused, what are you saying, that she
15 activated the foot pedal and kept it down?

16 A. Right, until she got the full stroke,
17 right, absolutely.

18 Q. Did you notice the different
19 application methods for the press brake on the
20 pedestal?

21 A. Well, I noticed what they had on the
22 pedestal. They had single stroke capability,
23 they had a continuous capability, the --

24 Q. What is the continuous capability?

1 A. That's the sewing machine, you hold
2 your foot down, it keeps bobbing up and down.
3 In single stroke you put your foot down, I don't
4 care if you leave it forever, you get one stroke
5 period, that's it.

6 Q. Okay. I think you said you never got
7 to test it with the -- with any foot pedal; is
8 that right?

9 A. Right.

10 Q. Did you bring a foot pedal?

11 A. No, I didn't.

12 Q. Whose -- were you intending to use a
13 particular foot pedal?

14 A. No, whatever foot pedal they had at the
15 plant I was going to use.

16 Q. Do you know -- did you ever learn that
17 they did have one there?

18 A. They said they had one. They just
19 couldn't switch it over to the foot mode.

20 Q. So your testimony is that the press
21 brake was not set up such that if you hit the
22 foot pedal, that it would just perform
23 one revolution and stop?

24 A. No, you have to put your foot on and

1 hold it down and you only get one. It is a
2 single stroke control. You then have to remove
3 your foot from the pedal, put it back to get the
4 next stroke.

5 But it is the way all press brakes are
6 set up, you -- is the movement you remove your
7 pressure from the control, it freezes. That
8 makes it much safer incidentally than a power
9 press.

10 Q. You were -- I took us off that path
11 that I was going down. You were describing the
12 differences, all the differences between a punch
13 press and the press brake that leads you to
14 conclude that press brakes should always have
15 the gated foot control.

16 A. The -- there is a menu of safety
17 devices that you can use for power presses that
18 is much easier to put on and very prevalent that
19 people will put them on and they are very clumsy
20 and difficult to use.

21 For example, barrier guarding which is
22 one of the most popular methods in the building
23 a fence in front of the machine is very popular
24 on a punch press, it is almost impossible to use

1 on a press brake because in a press brake you
2 have parts that are -- come out of the machine.

3 And as you do your operation, the
4 bending takes place and moves the workpiece in
5 front of the -- in front of the unit and you can
6 crush your fingers between the workpiece and the
7 ram, not the bottom of the ram, just the side,
8 or if you put on a barrier guard between the
9 barrier guard and the workpiece, so you have a
10 barrier guard introduces -- can introduce a
11 brand new pinch point that you never had before.

12 You don't have this on a punch press,
13 you know, the -- there is a compactness to
14 the -- to punch presses. Most of them all the
15 operation is done within the platen, the table
16 on the punch press.

17 And the -- most of the classical
18 operations on press brakes are all done --
19 the -- with workpieces hanging out of the press.
20 The punch press has a problem of you have to not
21 only get rid of the workpiece itself that's
22 already been formed, but you also are left with
23 scrap.

24 You are almost never left with scrap on

1 a press brake because it is bending things. It
2 is not punching them. It doesn't mean you can't
3 do something funny, you know, on the -- on a
4 press brake.

5 But the ordinary press brake operations
6 bend things. They don't put holes into them,
7 you know, the -- and punch, you know, like a
8 paper punch, punch out -- you know, put holes in
9 things where you will have scrap from the holes.

10 You don't have that on the press brake.
11 And that means that you spend more time -- you
12 have to get rid of two different things on a
13 punch press. There is only -- you have to get
14 rid of one thing and that's shift the workpiece
15 out of the machine.

16 The -- another difference is that you
17 can take a single die in a press brake and make
18 an infinite number of parts.

19 In a punch press one die is generally
20 one die, one part. And the -- you can only use
21 that die and the punch press to do one and only
22 one thing. And it's, you know, in general, you
23 know, every die that you put into a press brake
24 will do an infinite number of things, so, you

1 know, that's among the things that are different
2 in the -- that make the thing so that you are
3 doing a rapid work where keeping your foot
4 riding the pedal is something that is easy to
5 do, desirable to do, is you are motivated to do
6 it. See, on the punch press, not true on the
7 press brake.

8 The press brake operations you are
9 sometimes walking extensively in front of the
10 machine. You know, this is a 6 foot machine.
11 It is a relatively small machine.

12 We have got press brakes that are
13 20 feet, you know, 20 feet long. There is a
14 huge apron in front of it and people walk around
15 on that apron to pick up parts and, you know,
16 bring new material, new workpieces and so this
17 makes a difference with a modern foot control
18 which confines itself anywhere on the floor, you
19 have a problem of bystanders and other people
20 stepping and accidentally activating your
21 footswitch which could be deployed anywhere on
22 the floor, where the original machines you
23 couldn't do that. You only had a foot pedal or
24 treadle. It was right on the face of the

1 machine or the apron of the machine. And so we
2 have introduced all kinds of new problems with
3 the so-called modern footswitch. So these are
4 the reasons why riding the pedal is not
5 particularly important in the press brake. It
6 is very important in the punch press.

7 And then this particular, you know,
8 design of the Linemaster has this wonderful
9 device that if you have single stroke control
10 which this machine has and which was certainly
11 the -- on the original Heim was set up for it,
12 in working in conjunction with this kick plate
13 it absolutely minimizes the business of
14 accidentally stepping on -- riding the pedal. And
15 so what, so you ride the pedal, it doesn't make
16 any difference, you don't get a stroke.

17 And so the problem of riding the pedal
18 completely becomes diminimus on the press brake
19 and because it does you now have an opportunity
20 to stop the step-in contact, you know, stepping
21 onto this piece accidentally. You have now many
22 more devices available to you to minimize that
23 like the gate with all the different types of
24 gates they have.

1 Q. You indicated that she would have had
2 to hit the kick plate to activate that press
3 brake?

4 A. Yes.

5 Q. Isn't it possible for her to have been
6 riding the pedal and for I think some of the
7 instances you mentioned were sneezing to have
8 occurred where you then hit the -- in the same
9 way if your foot was outside the foot control
10 but your foot is inside the foot control; isn't
11 that possible?

12 A. It is possible. The best I can tell
13 you it is possible. It is really unlikely that
14 that's going to happen.

15 Q. Yeah, why would that be?

16 A. Because anyplace where you -- see, the
17 other pedals on the punch press, anyplace you
18 touch down on the pedal you get a stroke.

19 On this one you can't just push down
20 anywhere. You have to first push your foot all
21 the way back in and then come down on the thing
22 and that the likelihood of doing this is
23 diminimus compared to the punch press where if
24 you ride the pedal, anyplace you touch it, you

1 are in trouble.

2 Q. How much force was necessary on this
3 particular foot control to push that lock plate?

4 A. I don't think I measured the force.

5 Q. I guess you couldn't have because you
6 never saw the foot control; right?

7 A. No, no, no, no, I have duplicate, you
8 know, I have my own --

9 Q. No --

10 A. -- things. I don't think I have ever
11 measured it.

12 Q. I meant -- okay, you never measured on
13 any exemplar?

14 A. Right.

15 Q. -- with anyone whatsoever?

16 A. Right.

17 Q. What -- your opinion is that she
18 accidentally stuck the foot in, hit the kick plate
19 and pushed down?

20 A. Yes.

21 Q. She went horizontally and then
22 vertically.

23 A. Right.

24 Q. What caused her to do that in your

1 opinion?

2 A. The -- what happens is all you have to
3 do is reach for the part and reaching for the
4 part will shift your body forward to do this.

5 Q. Do you have any indication that that's
6 actually what happened here?

7 A. It has to have happened.

8 Q. How far did she move her body to reach
9 for the part?

10 A. The -- I don't know how far she moved
11 her body, but she is going to step up the
12 control in a convenient location so that she can
13 reach the -- put parts in and parts out and hit
14 the control in the most convenient way.

15 Q. How far does the foot -- what's the
16 minimum distance the foot would have to move to
17 enter the control, the foot control, activate
18 the kick plate, and then depress the pedal?

19 A. Well, it would be the distance that her
20 foot has to move into the unit before it touches
21 the kick plate.

22 Q. Right.

23 A. It has to move in that much. I think
24 it is 4 or 5 inches. You know, I will get a

1 pedal and I will measure it.

2 Q. Has she ever said that her foot moved
3 4 or 5 inches?

4 A. Oh, she doesn't have a clue what her
5 foot is doing. If she knew that, she would not
6 have had the accident. I mean she doesn't want
7 to reach into the pedal. She wants to reach her
8 hands into the machine.

9 Q. Well, would leaning -- would the --
10 this, do you call this an involuntary movement
11 of the foot?

12 A. It is probably -- I think it is
13 involuntary. I don't think it is a voluntary.
14 Voluntary, you know, you are advertently trying
15 to activate the machine. She doesn't want to
16 activate the machine. She wants to reach in
17 with her hands and doesn't want to put her foot
18 on the foot pedal, she doesn't want to do that.

19 Q. Why couldn't this involuntary movement
20 of the foot occur if her foot was already inside
21 resting on the pedal? What's the difference?

22 A. It is -- it is so unlikely that that
23 would happen.

24 Q. I am just trying to hear as to why.

1 A. Because --

2 Q. All --

3 A. -- you have --

4 THE COURT REPORTER: Pardon me, I can only
5 get one at a time.

6 MR. ROBINSON: Sorry.

7 THE COURT REPORTER: So we have to wait for
8 the answer to be finished and the same --

9 THE WITNESS: There is a very large movement
10 you have to make with your foot to get to that
11 back plate. You got to get -- you know, you
12 have to do something to get to the back plate
13 where on the punch press I don't care where you
14 touch it, you touch it the front, the middle,
15 anyplace. There is only one place that you can
16 do it, you have got to get your foot in and then
17 put the pressure down.

18 BY MR. ROBINSON:

19 Q. I wanted you to explain it, all the
20 reasons that you know as to why her foot also
21 couldn't have involuntarily moved forward while
22 she was riding the pedal as opposed to moving
23 the extra distance with the foot outside of the
24 foot control?

1 A. The -- if she is really riding the
2 pedal, she has already established an
3 equilibrium. And when she moves forward, it is
4 just like my foot on the ground, it will
5 actually resist movement.

6 You put your foot down, the friction
7 stops the thing from sliding forward. If she
8 has her foot resting on this pedal, the -- it
9 actually will stop her from moving forward into
10 this kick plate.

11 Q. Do you know where her foot was before
12 it began this involuntary movement forward?

13 A. She -- I think that she is reporting
14 her foot was not in the pedal at all.

15 Q. Do you know if it was on the ground?

16 A. Don't know where it is.

17 Q. Well, if it was on the ground, then
18 that would also suggest as you just indicated
19 that that friction would minimize the likelihood
20 of the involuntary movement forward; right?

21 A. It is. It would do that if her foot
22 was on the ground. But if she is stepping
23 forward and needs equilibrium because she is
24 reaching forward, you know, if you are standing

1 up and you want to reach forward, you have to be
2 careful because if you reach too far forward,
3 you need to put your foot out to stabilize
4 yourself.

5 Q. We don't have any evidence that she did
6 that though; do we?

7 A. We don't know. She is moving forward,
8 it is in a direction --

9 Q. Watch your microphone.

10 A. It is in a direction where you -- you
11 know, if I establish that how your foot is
12 located like if you take the test that I did
13 with the standing tests, a standing test start
14 off where I have my foot activating the pedal
15 all the way forward activating the pedal and I
16 go backwards to reach a different equilibrium
17 position outside, I will be careful, your body,
18 if it ever wants to go into ordinary equilibrium
19 again in the first position, you don't have to
20 think about it. It goes back in there and it is
21 now in activating position.

22 You can do the same thing when you are
23 seated. You know, you get yourself seated and
24 everything positioned so that your foot is on

1 the pedal up against the back plate so it is in
2 a perfect position for you to activate the
3 press.

4 Now, you take your foot off, you have
5 already got an equilibrium position established
6 where your foot is all the way into the pedal,
7 an activating position.

8 Q. Do you know if her foot would have been
9 able to be inside the foot control and not
10 necessarily resting on the pedal?

11 A. It would -- it can go inside, not rest
12 on the pedal at all and just in one stroke which
13 is what you will see my people doing and one
14 stroke you hit the back plate and push down
15 simultaneously.

16 Q. I am saying the possibility also exists
17 that she had her foot inside the foot control,
18 not actually resting on the pedal so she doesn't
19 have that friction --

20 A. Just dangling in the air?

21 Q. Dangling inside the housing --

22 A. Yes.

23 Q. -- and that by leaning forward she does
24 the same thing, activates the kick plate, that

1 is a possibility; isn't it?

2 A. That is a possibility that she can do
3 that. It is the -- if you have the gate on the
4 front, the -- you can't stop somebody that has
5 opened up the gate, put their foot in there,
6 poised the thing in a position that you just
7 described, then you bypassed all of the safety
8 devices we are talking about, so you are ready
9 to -- you know, you are ready to go ahead and
10 make a stroke. It is almost everything you have
11 done is advertent to make a stroke.

12 But if you are not making a stroke and
13 you take your foot out and don't have the plate
14 resting on your foot, you know, which is not a
15 desirable thing to have a plate resting on your
16 foot, the -- then you are outside, you are not
17 going to get in. I don't care what you do, you
18 won't get in unless you are advertently getting
19 in.

20 Q. Would you agree that if she was riding
21 the pedal, if her foot was inside the foot
22 control and for whatever reason her foot
23 voluntarily moved -- involuntarily moved forward
24 and hit that kick plate, accidentally activated

1 the pedal, that the gate would be meaningless --
2 the absence of a gate would be meaningless?

3 A. Oh, right, because she has already
4 bypassed the gate. In order to do -- what you
5 have done with your question is you have
6 eliminated the gate and then we start off with
7 no gate.

8 She has already opened the gate, put
9 her foot into the thing, and she is now -- if
10 she is contacting the pedal at that point,
11 leaning forward is not going to get her up
12 against that plate.

13 That's just like being on the floor,
14 just because you lean forward, your foot doesn't
15 slide forward when you do this, it would be
16 stabilized. So she needs to do something which
17 is really weird, she is lifting up on the gate
18 and balancing the gate upward and she has got
19 her foot off the pedal, so she actually has --
20 supporting the weight of the gate on a foot
21 that's not on the pedal itself to ride it. And
22 then because she moves forward she now, you
23 know, activates the thing. It is just too many
24 unlikely things.

1 Q. Is your assumption on the way this
2 accident happened including an assumption that
3 her foot is dangling in the air?

4 A. It has nothing to do with dangling in
5 the air.

6 MR. HARTMAN: That was your assumption.

7 THE WITNESS: It is outside of the foot
8 pedal.

9 BY MR. ROBINSON:

10 Q. And outside of the foot pedal is it in
11 the air or is it on the ground?

12 A. It doesn't make any difference.

13 Q. I thought you said a little bit ago if
14 it were on the ground the friction from -- that
15 that friction would reduce the likelihood of the
16 foot involuntarily moving forward?

17 A. If she has to stabilize herself, she
18 will have to pick her foot up and then step down
19 someplace. And you don't -- if you are riding
20 the pedal, your foot is already resting where
21 you want it and you move forward, you are not
22 moving that foot forward, you know, it is
23 stabilized on the pedal.

24 Q. How high is the pedal off the ground?

1 A. About an inch and a half.

2 Q. What makes you think that her foot
3 would have to raise an inch and a half rather
4 than just slide forward on the ground?

5 A. I don't think I understand the
6 question.

7 Q. This involuntary movement that you have
8 as her activating the foot control, it requires
9 her also not only to involuntary move her foot
10 the distance of the control, hit the kick plate
11 and then vertically go down, it also requires it
12 first, if her foot is on the ground to raise up
13 the 1 1/2 inches vertically, then go
14 horizontally that distance that we talked about,
15 and then go back down vertically and activate
16 it, that's what's required by your assumption;
17 right?

18 A. That's absolutely correct.

19 Q. And we don't have any evidence that
20 either one of those three events occurred; do
21 we?

22 A. Well, what happens is --

23 Q. Do we have any evidence?

24 A. Well, we don't have any evidence

1 concerning anything except that the -- one of
2 the big problems with the footswitch is that
3 when you walk and you move forward at all, your
4 normal gate, especially when you are young, is
5 to raise your foot 1 1/2, 2 inches off the
6 ground. That's why people are always walking
7 into these switches and stepping on them where
8 the old ones were 6 inches off the ground and
9 you never do that.

10 Q. She wasn't walking at the time of this
11 accident; was she?

12 A. If she is in a position and she moves
13 forward, she is taking a step forward, that's
14 the first part of walking.

15 Q. She was sitting when this happened;
16 wasn't she?

17 A. We don't know that she is sitting.

18 Q. You don't know that?

19 A. She is -- I told you that the evidence
20 apparently is that she was either sitting or
21 leaning against the -- against the -- this
22 stool, but when she moves forward we don't know
23 what she was doing whether she left contact with
24 the stool or not.

1 Q. Do you have any -- she has testified
2 that she was sitting; do you know that?

3 A. No, I don't know that.

4 Q. The one witness whose deposition you
5 don't have, the only one to have seen her before
6 says she was sitting, do you know that?

7 A. After the accident, they found her
8 sit --

9 Q. Before the accident, no, before the
10 accident, before the accident.

11 A. I don't know anything about that.

12 Q. If she were sitting at the time of the
13 accident --

14 A. Yes.

15 Q. -- would that affect your opinion?

16 A. If she was -- absolutely sitting --

17 Q. Yes.

18 A. -- at the time of the accident?

19 Q. Yes, yes.

20 A. The -- it has -- you can still from a
21 sitting position, if she is in a sitting
22 position where she is able to activate this
23 machine from the sitting position, that she set
24 it up so that when I lean forward in this seated

218

1 position I can activate the pedal, then she is
2 going to be able to step on the pedal any time
3 she leans forward.

4 Q. Did you do any testing with anyone in
5 the sitting position to see if their foot moves
6 forward like you tried to suggest with your
7 standing test?

8 A. No, I don't have to do those to
9 understand how that works.

10 Q. I didn't say you have to. I said did
11 you do it?

12 A. No, you saw what -- didn't I send you
13 the videotape? I thought it was sent to you.

14 Q. You did.

15 A. Then if you have seen the video tape,
16 you know that I didn't do that.

17 Q. So without the argument the answer is,
18 no, you didn't do any testing to see --

19 A. Why not an argument?

20 THE COURT REPORTER: Pardon me --

21 THE WITNESS: Why not an argument? I don't
22 mind an argument. You are arguing with me so
23 why not an argument? I don't mind your arguing
24 with me.

1 BY MR. ROBINSON:

2 Q. I don't follow what you are doing right
3 now. The question simply is did you perform any
4 tests with the subjects seated? What is the
5 answer, sir?

6 A. The answer to that is no.

7 Q. Okay.

8 A. And I sent you the videotape so that
9 you know that I was not doing simulation tests,
10 I was doing a worst case scenario test.

11 Q. We are just trying to get some
12 testimony here, sir.

13 A. No, no, no, that's not what you are
14 trying to do, that's not what you are trying to
15 do.

16 Q. Did you --

17 A. You are trying to create new facts that
18 are not available in this case. And I am not
19 going to introduce facts that I don't know
20 about. I am not sitting there taking a video of
21 the woman while she is having her accident so
22 everything else becomes speculation.

23 Q. Did you ask -- it does. Did you ask
24 her if she was sitting?

1 A. I thought I have testified at least
2 four times that I did not interview this woman.

3 Q. I thought you said you talked with her
4 for -- that Matt Ulmenstein was correct that you
5 did talk with her for 15 minutes or so?

6 MR. HARTMAN: And he also indicated to you
7 that he did not interview her about the accident
8 in the same conversation.

9 BY MR. ROBINSON:

10 Q. I just want to make sure I know this,
11 did you ask her if she was sitting?

12 A. I did not ask her what she was doing at
13 the time of the accident.

14 Q. Are there any authorities that you have
15 utilized in forming your opinion that this
16 accident, this involuntary movement of the foot
17 can occur when she is in the seated position?

18 A. I didn't refer to any authorities on
19 this.

20 Q. Is there any support outside of your
21 testimony for that conclusion?

22 A. No.

23 Q. Did you perform any type of analysis to
24 determine if that, in fact, could occur, that if

1 she were in the seated position, that her foot
2 could involuntary move vertically upwards high
3 enough to get above the pedal, horizontally into
4 the foot control far enough to hit the toe plate
5 and then back down vertically well enough to
6 bring the ram onto her hands?

7 A. Not necessary to do anything. If she
8 is able to advertently, you know, step and
9 operate this press, that she wants to get a
10 stroke on the press, then you can get that same
11 exact motion involuntarily.

12 Q. I am just asking if there is any other
13 support that we can go to to say someone else
14 agrees with Professor Barnett on this or that
15 Professor Barnett has done something to show
16 that someone in a seated position will actually
17 move their foot in those dimensions?

18 A. I have given you the rationale.

19 Q. Is there anything else that you haven't
20 given us that supports your conclusion that her
21 foot assuming she was seated would move
22 vertically up 1 1/2 inches minimum, back
23 4 inches or so and -- horizontally and then back
24 down vertically to depress the pedal?

1 A. No, I have given you the full technical
2 argument.

3 Let's have Steve in. Those are the
4 records.

5 MR. ROBINSON: Okay, do you want to take a
6 break and get those in here?

7 THE WITNESS: Open the door up, let's do
8 that.

9 THE VIDEOGRAPHER: Off the record at 4:23 p.m.

10 (Recess taken.)

11 THE VIDEOGRAPHER: It is the beginning of
12 Tape No. 3. Back on the record at 4:25 p.m.

13 BY MR. ROBINSON:

14 Q. Does the distance that the foot control
15 was located away from Miss Lindquist's foot play
16 any role in your assumptions and opinions?

17 A. No.

18 Q. Does it matter at all?

19 A. No, it doesn't.

20 Q. It could be 5 feet away or it could be
21 1 inch away?

22 A. As long as she is able, if she is going
23 to testify that from whatever position, whether
24 she is standing, leaning or seated, if she can

1 activate the unit and reach into this, you know,
2 reach into this machine and activate the foot
3 pedal, as long as she can do that advertently,
4 she can do this inadvertently.

5 Q. So is one scenario more likely or less
6 likely if her foot is literally 12 inches away
7 from the foot control at its resting unapplied
8 position versus 2 inches away from the foot
9 control?

10 A. No, it has nothing to do with that.

11 Q. It is exactly the same situation?

12 A. It is not exactly the same. All you
13 have to do is set the pedal up so that you can
14 activate the machine and that you can -- from
15 that same position you can reach into the
16 machine.

17 If you can do that, then what you can
18 do is what you did advertently to activate the
19 machine, you can do inadvertently. And if you
20 are close enough to the machine where your hands
21 can be in there while you are doing this, you
22 are in big trouble is there.

23 Q. And maybe my question was poorly asked
24 and I apologize. Is it equally likely for her